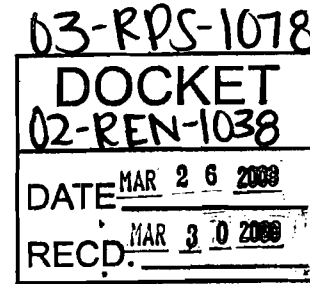


City of Palo Alto

Utilities Department

March 26, 2009

California Energy Commission
**Re: Docket No. 02-REN-1038
and Docket No. 03-RPS-1078**
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504



RE: California Energy Commission Staff Workshop on 2006 RPS Procurement Verification Data Review; Comments of the City of Palo Alto regarding RPS Procurement from "Unbundled" Energy Contracts for Renewables Portfolio Standard purposes - Mountain View I and II Facilities

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Dear Commissioner Levin and Chair Douglas:

The City of Palo Alto, Department of Utilities ("Palo Alto" or "CPAU") appreciates the opportunity to submit these comments, addressing the issues to be presented by the staff of the California Energy Commission (the "Commission") for discussion of the referenced matter at the Staff Workshop on RPS Procurement Verification Data Review on March 28, 2009 (the "Workshop").

These comments pertain to the RPS Procurement from "Unbundled" Energy Contracts - Mountain View I and II Facilities, as described in Attachment B to the Commission's Notice of the Workshop.

1. **The City of Palo Alto own and claim the renewable attributes of the Mountain View II RECs that it purchased, and it has taken steps to ensure the RECs were not double-counted**

Palo Alto purchased 3,604 MWh of unbundled renewable energy certificates ("RECs"), which were generated by Mountain View II ("MVII") in 2006, from 3 Phases Energy Services ("3 Phases"). Palo Alto used these RECs to supply the residential and non-residential customers of CPAU's voluntary renewable energy program, PaloAltoGreen. The RECs were purchased with the understanding that (a) Palo Alto was and is the sole owner of the RECs, and (b) the RECs were not sold, marketed, or otherwise claimed by any other party.

Palo Alto took steps to ensure the protection of its purchase for the benefit of its customers, and to make sure the RECs were not double-counted. These steps included obtaining separate signed attestations from 3 Phases and MVII, which stated that:

- a. The RECs were not sold, marketed, or otherwise claimed by the seller or any third party;

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- b. The RECs were not used to meet any federal, state, or local renewable energy requirement by the seller or any other entity; and
- c. The electrical energy generated with the RECs was not separately sold, separately marketed, or otherwise separately represented as renewable energy by any other entity.

CPAU, subsequently, marketed, represented, and sold the RECs to its residential and non-residential customers through PaloAltoGreen under the conditions laid out in (a), (b), and (c), above.

To further ensure the environmental integrity and protection of its purchase and the interests of its customers, and to prevent double-counting, Palo Alto obtained Green-e Energy Certification for PaloAltoGreen. As the Commission knows well, Green-e Energy ("Green-e") is the nation's leading consumer protection program for the sale of renewable energy in the retail market. Every year, Green-e's verification process and audit examines CPAU's contracts, invoices, and billing statements to verify, among other things, that:

- a. Palo Alto purchased enough RECs to meet the demand of customers participating in its PaloAltoGreen program;
- b. The information provided to customers on PaloAltoGreen's annual product content label is accurate; and
- c. The RECs purchased and sold by Palo Alto were not sold to more than one customer.

The MVII RECs that Palo Alto purchased and sold to its CPAU customers were all certified and verified by this rigorous process. CPAU took the further step of notifying the Commission of its purchase and full claim of all rights, title and interests in its MVII RECs through its 2006 Annual Report to the SB 1305 Power Source Disclosure Program.

2. Renewable Attributes of Unbundled Electricity Can Only Be Claimed by Their Owner

As stated in Attachments A & B¹ of the Commission's Notice regarding the Workshop,² the unbundled electricity from Mountain View I & II facilities that Southern California Edison ("SCE") received during the period 2004-2006 does not contain the RECs. Palo Alto calls the Commission's attention to the power purchase agreement, which states that "All rights and interests in the renewable attributes, emission reductions or credits (offsets) relating to the Projects shall

¹ http://www.energy.ca.gov/renewables/02-REN-1038/documents/2009-03-26_workshop/2009-03-26_WORKSHOP_ATTACHMENT_A.PDF and http://www.energy.ca.gov/renewables/02-REN-1038/documents/2009-03-26_workshop/2009-03-26_WORKSHOP_ATTACHMENT_B.PDF

² http://www.energy.ca.gov/renewables/02-REN-1038/notices/2009-03-26_WORKSHOP_NOTICE.PDF

remain the property of Party A.”³ “Party A” is the facility owner. It is indisputable that the buyer, SCE in this case, does not own the renewable attributes of the electricity that it purchased from the Mountain View I & II facilities. As California law prohibits the use of unbundled electricity to comply with California’s Renewables Portfolio Standard (RPS), the unbundled electricity purchased by SCE is not RPS-eligible and thus cannot (and should not) be used to make RPS claims. Only the owner of the renewable attributes can and should be able to claim the renewable attributes.

3. Conditions for Claiming Unbundled Procurement as RPS-Eligible

California law prohibits double-counting in compliance with its RPS.⁴ It also prohibits electricity without renewable attributes to count toward RPS compliance. Therefore, the owner of unbundled electricity must own the RECs associated with it. The unbundled electricity and its RECs may be purchased under separate contracts, but they must be acquired by the same owner. Palo Alto has no knowledge of any other manner in which one can comply with California’s RPS. In the public interest and in the interest of promoting market fairness, Palo Alto urges the Commission to uphold and enforce all current contracts, policies, and laws in regard to the RPS without regard to the identity of the counterparties. Any Commission action or decision which is inconsistent with Palo Alto’s position on this matter would be inconsistent with the Commission’s present policies, would undermine the RPS goals, and would harm the sanctity of Palo Alto’s contracts with its suppliers and customers.

4. Impact on Palo Alto and Other Parties

If the Commission allows unbundled electricity without renewable attributes to be (and count as) RPS-eligible, then the RPS goals and laws will be compromised; all parties involved in the sale or purchase of RECs henceforth will be harmed. Palo Alto and its PaloAltoGreen customers would no longer be the sole owner of all rights, title, and interests to the RECs they legally purchased. CPAU would be obliged to disclose the loss to customers. Through no fault of its own, Palo Alto would suffer significant financial damage and damage to its reputation, and the credibility and validity of its renewable energy program would be severely undermined. Damages could include, without limitation:

- a) The high cost to find and replace the RECs, if this is even possible;
- b) The loss of customer confidence, support, and participation in the PaloAltoGreen (voluntary renewable energy) program; and

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http://www.cers.water.ca.gov/pdf_files/power_contracts/mountain_view/092002_pge_et_amended_ppa.pdf

⁴ SB 107 states: “A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other State”. http://www.energy.ca.gov/portfolio/documents/sb_107_bill_20060926_chaptered.pdf

- c) The loss of credibility and reputation that CPAU has earned within the renewable energy market since the program began in 2003. Parenthetically, PaloAltoGreen has the highest participation rate in the nation, according to the Department of Energy ("DOE"). The program is Green-e Energy Certified. CPAU also won the DOE's Green Power Program of the Year award in 2008. All of these achievements would be damaged and the wisdom of the awards called into question.

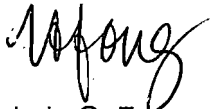
As Palo Alto is also a national leader in voluntary renewable energy programs, damage to the validity of the PaloAltoGreen program would also raise questions about the validity of the other 850+ utility voluntary renewable energy programs across the United States. As voluntary renewable energy programs are a significant part of the robust voluntary renewable energy market,⁵ damage to the market as a whole would also occur.

5. Conclusion

The Commission's mission states that its highest responsibility is to the people of California. Palo Alto firmly believes that, in keeping with this mission, the Commission should uphold and enforce all contracts, policies, and laws in regards to this matter and not allow unbundled electricity procurement to qualify as RPS-eligible. If the Commission grants RPS-eligibility to electricity without renewable attributes, then the Commission is effectively endorsing a double-counting mechanism, taking what was rightfully purchased and owned by thousands of California consumers and transferring it to another party, causing significant damage in the process. Palo Alto and its customers acquired the Mountain View II RECs in accordance with applicable laws, rules and regulations, and they have made valid public claims to the renewable attributes – these claims simply cannot be undone.

Simply put, the Commission should uphold its policies and the law.

We very much appreciate your consideration of these comments.



Valerie O. Fong
Director of Utilities

cc: James Keene, City Manager
Gary Baum, City Attorney
Joyce Kinnear, Manager, Utility Marketing Services
Grant Kolling, Sr. Assistant City Attorney
Dan Lieberman, Sr. Manager, 3Degrees

⁵ Retail sales in the voluntary renewable energy market totaled over 18 billion kWh in 2007:
<http://www.nrel.gov/docs/fy09osti/44094.pdf>